

REMARKS

Claims 1-4 and 8-15 are pending in this application. In response to the amendment in reply to an office action dated September 21, 2004, the Office contends that the amended claims are directed to an invention distinct from and independent of the invention previously claimed and elected, and therefore must be withdrawn. Applicant traverses that response and respectfully requests reconsideration.

In a previous Office action, restriction was required between a set of adhesive protection elements and a method for protection. In response the set of adhesive protection elements was elected for further prosecution, and all of the claims directed to the non-elected invention of the method have been withdrawn. Now, in response to a further Office action, the sole independent claim (claim 1) has been amended to affirmatively recite the limitation of:

a set of clothing articles...defining the set of clothing openings [to be protected]

This limitation was previously present, at least by implication, through the limitation in the claims, as elected, of:

at least two types of clothing openings selected from the group of types of clothing openings consisting of waist band, shirt collar, shirt front, shirt sleeves and pant cuffs,

Claim 1 is also further amended to include the limitations of dependent claim 7. Both changes further narrow the elected claims. No claims have been added to this application, and as mentioned above, claims directed to the non-elected method invention have been withdrawn..

Therefore, the amendments to the claims are not directed to an invention distinct from and independent of the invention previously claimed. Rather, the amendments merely modify the scope of the claimed invention. In fact, the amended claims remain directed to the same invention, but for the addition of further, narrowing limitations, and no new claims have been introduced.

The Office maintains that the amendments result in claims directed to an invention distinct from and independent of the invention previously claimed. However, the Office fails to demonstrate how there is no relationship between the alleged two or more subjects disclosed. In

addition, the Office provides no support as through references as to how the claimed inventions are capable of separate manufacture, use, or sale as claimed and how they are patentable over each other.

First, the amended claims retain the same classification as the pre-amended claims and the subject of the disclosure is not distinct in the art. The amended and pre-amended claims both relate to adhesive elements that provide protection of clothing openings from crawling insects.

Second, the amended claims retain the same status in the art. An explanation of the amended and pre-amended claims does not result in the formation of separate subjects for inventive effort by the inventor(s). Furthermore, the examiner has not cited patents evidencing separate status.

Third, the amended claims do not result in a different field of search. It will not be necessary to conduct searches for the amended claims in places where no pertinent art to the subject of the pre-amended claims exists.

Finally, the rules and MPEP section cited by the Office fail to support its holding. In particular, 37 CFR §1.142(b) relates to withdrawal of claims to non-elected inventions in response to a requirement for restriction. In this application, restriction was required between a set of adhesive protection elements and a method for protection. All of the claims directed to the non-elected invention of the method have been withdrawn. The remaining claims are all directed to the elected invention of the set of adhesive protection elements. MPEP §821.03 is specifically directed to "Claims for Different Invention Added After an Office Action." No claims have been added to this application. Rather, the sole independent claim has been amended to affirmatively recite a limitation that was previously present in the claims, at least by implication, and to further include the limitations of an elected dependent claim, both changes thus further narrowing the existing claims. As mentioned above claims directed to the non-elected method invention have been withdrawn. The last citation, to 37 CFR §1.111, merely relates to the requirement for making a complete response, which has been addressed.

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Page : 4 of 4

Attorney's Docket No.: 12912-002001

In conclusion, the amended claims are not directed to an invention distinct from and independent of the invention previously claimed and elected. Hence, the applicant is entitled to substantive consideration of the earlier-filed amendment in this application.

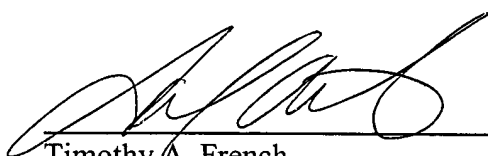
On this basis, we submit that this application is now in condition to be allowed. Early favorable action is solicited.

Enclosed is a check for \$60.00 in payment of the petition for a one month extension of time fee pursuant to 37 CFR §1.136(a). Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: _____

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